IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 508 of 1995

For Approval and Signature:
Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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RAMABHAI LALABHAI CHAMAR
Versus
STATE OF GUJARAT

Appearance:
1. Criminal Appeal No. 508 of 1995
MR JM BUDDHBHATTI for the appellant
Mr. A.J. Desai, APP, for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 06/08/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.H.KADRI)

1. The appellant-original accused of Sessions Case No.145 of 1993, by filing this appeal under Section 374(2) of the Code of Criminal Procedure, 1973, ('Code' for short), has challenged the judgment and order dated May 4, 1995, passed by the learned Additional Sessions Judge, Sabarkantha, at Himatnagar, by which judgment and

order, the appellant was convicted under Section 302 of the Indian Penal Code and sentenced to undergo R.I. for life and fine of Rs.300 in default R.I.for one month.

2. It is the prosecution case that the appellant, Ramabhai Lalabhai Chamar, was a resident of village Lank, Taluka: Bayad, District: Sabarkantha, and was supplying milk to the Milk Federation in the village. The appellant had taken a loan from deceased Amraji Motiji for purchase of buffalos. On August 28, 1993, bonus was distributed in the Milk Federation, wherein, the appellant was paid a sizable amount. As the deceased Amraji Motiji wanted to collect the loan amount paid to the appellant, he had gone to the house of the appellant at 21.45 hrs on August 28, 1993. The deceased was seen by P.W.2, Khatuji Motiji Khant, and P.W.3, Nanaji Nathaji Khant, who were at the relevant time sitting at a pan-galla situated near the house of the appellant. The deceased was asked by P.W.2 and P.W.3 why he was going towards the direction of the house of the appellant and that too in that odd hour. The deceased had replied that, as the Milk Federation had distributed the amount of bonus, he was going towards the house of the appellant to get back the amount of loan. Saying so, the deceased had gone in the direction of the house of the appellant. After few minutes, P.W.2 and P.W.3 heard shouts of the deceased 'run run'. Hearing the shouts of the deceased, P.W.2 and P.W.3 ran towards Chamar Vas where the house of the appellant is situated. When P.W.2, accompanied by P.W.3 and one Jenaji Motiji (not examined) reached near a neem tree, they found deceased Amraji lying in a pool of blood and he was gasping for breath. P.W.2 and P.W.3 asked the deceased who had inflicted the injury on his stomach. The deceased made a declaration before P.W.2 and P.W.3 that the appellant had inflicted a knife blow on his stomach. From the locality of Chamar Vas, one Vina Lemba and Mohan had also come where the deceased was lying and P.W.2 and P.W.3 saw that the appellant was carrying a knife in his hand and the appellant threatened P.W.2 and P.W.3 and Jenaji Motiji to leave that place otherwise they would also be dealt with the blows with knife just like Amraji. On hearing threat from the appellant, P.W.2 and P.W.3 raised shouts and, therefore, Rameshbhai Bhathi Thakore and Bhudarbhai Jivabhai had come to their rescue. It is the say of the prosecution that, thereafter, Amraji had succumbed to the injuries at that very place. P.W.2 Khatuji Motiji Khant, who is the brother of deceased Amraji, filed First Information Report. P.W.10, D.D. Chauhan, who was at the relevant time discharging his duties as PSI, Bayad Police Station, recorded the First Information Report of the P.W.2 at

23.50 hrs. The said First Information Report was registered at C.R.I-99 of 1993 at Bayad Police Station for offences under Section 302 Indian Penal Code against the appellant. P.W.10, PSI Chauhan, on August 29, 1993 from 0.45 hrs to 1.30 hrs held inquest of the dead body of Amraji and sent the dead body for the post-mortem. The panchanama of scene of offence was prepared by PSI, Chauhan, at 8.30 a.m. to 9.00 a.m. In presence of panchas, PSI, Chauhan, had collected blood-stained earth, control earth and pieces of flesh from the place of incident and those articles were seized under the panchanama. The post-mortem of the dead body of the deceased Amraji was performed by P.W.1, Dr. Ishwarbhai Patel, Medical officer, Primary Health Center, Bayad. PSI, Chauhan, thereafter, had recorded statements of witnesses and on August 30, 1993, he arrested the appellant under an arrest panchanama. When the appellant was in custody, he had shown his willingness to produce muddamal knife with which he had inflicted a blow on the stomach of the deceased Amraji Motiji. Accordingly, two independent witnesses were called and preliminary panchanama was prepared at Bayad Police Station. Thereafter, PSI, Chauhan, in the company of two panchas and police personnel, had gone in a police vehicle in the direction as shown by the appellant. The appellant had shown the place where he had hidden muddamal knife, i.e. his own house situated at Chamar Vas. The muddamal knife hidden in the wall of the house was discovered and, accordingly, discovery panchanama under Section 27 of the Evidence Act was prepared and the muddamal knife, which was stained with blood, was seized. PSI, Chauhan, had sent the clothes put on by the deceased as well as incriminating articles seized from the place of incident and muddamal knife for analysis to the Forensic Science Laboratory. On receipt of the report from the FSL, and the post-mortem notes, PSI, Chauhan, submitted chargesheet in the Court of the learned Judicial Magistrate, First Class, at Bayad, which was registered as Criminal Case No.900 of 1993 against the appellant for the offence punishable under Section 302 of the Indian Penal Code and Section 135 of the Bombay Police Act. As the the offence punishable under Section 302 of the Indian Penal Code is exclusively triable by the Court of Sessions, the learned Judicial Magistrate, First Class, at Bayad, by his order dated October 14, 1993, committed the case to the Court of Sessions Judge, Sabarkantha, where it came to be numbered as Sessions Case No.145 of 1993. Charge Exh.3 was framed against the appellant for the offence punishable under Section 302 of the Indian Penal Code and Section 135 of the Bombay Police Act. The charge was read over and explained to the appellant. The

appellant had pleaded not guilty to the charge and claimed to be tried.

3. To prove the charge framed against the appellant, the prosecution examined (1) P.W.1, Dr. Ishwarbhai Revadas Patel, Medical Officer, Primary Health Center, Bayad, who performed post-mortem of the body of deceased, Amraji Motiji, Exh.7; (2) P.W.2, Khatuji Motiji Khant, complainant, brother of deceased Amraji Motiji, Exh.11, (3) P.W.3, Nanaji Nathaji Khant, uncle of the deceased, Exh.13; (4) P.W.4, Ramiben Amraji, widow of the deceased, Exh.14; (5) P.W.5, Kantibhai Chhaganbhai, Secretary of the Milk Federation of village Lank, Exh.15, (6) P.W.6, Kantibhai Ramjibhai, Deputy Mamlatdar, who prepared map of place of the incident at Exh.17, (7) P.W.7, Panch of place of incident, Musabhai Gafurbhai, Exh.20; (8) P.W.8, Panch of arrest panchanama of the appellant, Vaghsinh Raisingbhai Zala, Exh.24, (9) P.W.9, Police Station Officer of Bayad Police Station, Jayantibhai Rupsinhbhai Balat, Exh.28, and (10), P.W.10, IO, PSI, Devising Dolatsing Chauhan, Exh.29. The prosecution has also produced documentary evidence such as post-mortem notes, Exh.9, certificate of cause of death of deceased Amraji Motiji, Exh.10, First Information Report Exh.12, extracts of register of Milk Federation of village Lank showing that the appellant was paid a sum of Rs.156.75 on 28.8.1993, Exh.16, map of scene of offence, Exh 19, panchanama of place of incident Exh.21, and the report of the FSL Exh.31.

4. After the evidence of the prosecution was over, the appellant was questioned with regard to the evidence led against him and his statement came to be recorded under Section 313 of the Code. The defence of the appellant was of general denial.

5. The learned Additional Sessions Judge, on appreciation of oral as well as documentary evidence, and after hearing the arguments of the prosecution and the defence, held that deceased Amraji Motiji had died a homicidal death. It was held that the prosecution had proved that on August 28, 1993, at 21.45 hrs. deceased Amraji Motiji had gone to the house of the appellant situated at Chamar Vas, Bayad, to recover the amount of loan advanced to the appellant. It was further held that the appellant had intention to cause death of deceased Amraji Motiji; had inflicted a knife blow on the stomach, and had caused murder of the deceased. On the basis of the abovereferred to conclusions, the learned Additional Sessions Judge has convicted the appellant for the offence under Section 302 of the Indian Penal Code and

sentenced to undergo R.I. for life and fine of Rs.300 in default R.I.for one month, which has given rise to filing of the present appeal by the appellant.

6. Learned advocate, Mr. J.M. Buddhbhatti, appearing for the appellant, and learned Additional Public Prosecutor, Mr. A.J. Desai, have taken us through the entire evidence produced by the prosecution.

7. Learned advocate for the appellant has submitted that when the deceased came to the appellant for recovery of loan which he had advanced, the appellant got excited and had inflicted a knife blow on the stomach of the deceased which ultimately resulted into death of the deceased. Learned advocate for the appellant has submitted that the prosecution had not examined any witness who had actually seen the occurrence of the incident and the prosecution case rests entirely on the so-called oral dying declaration made before P.W.2, Khatuji Motiji Khant, and P.W.3, Nanaji Nathaji Khant. Learned advocate for the appellant has further submitted that the incident had taken place in a fraction of seconds as a result of trivial dispute of recovery of loan between the appellant and the deceased and the appellant had no intention to cause murder of the deceased nor he can be said to have the requisite knowledge that the death would otherwise be the inevitable result. Learned advocate for the appellant has further submitted that, due to inflicting of one blow, the deceased succumbed to the injuries. Learned advocate for the appellant has submitted that the appellant had given only one blow and, therefore, at the most the offence would fall under Section 304 Part I or Part II of the IPC.

8. Learned Additional Public Prosecutor, Mr. A.J Desai, submitted that the prosecution had led sufficient evidence to hold that the appellant had with intention and knowledge inflicted knife blow on the vital part of the body of the deceased which had resulted into his death and, therefore, the conviction and sentence imposed by the learned Additional Sessions Judge does not require any interference by this Court in this appeal and the appeal should be dismissed.

9. It is borne out from the evidence led by the prosecution that the appellant had taken loan from deceased, Amraji Motiji. The evidence of the Secretary of the Milk Federation, P.W.5, Kantibhai, proved that the appellant was paid Rs.156.75 ps towards difference of price of milk on August 28, 1993. The documentary

evidence of the extracts of register of milk federation [Exh.16] also corroborates the oral testimony of the P.W.5, that the appellant was paid an amount of Rs.156.75 ps on August 28, 1993. The deceased was first seen at the pan-galla of Galabji Kanaji who happens to be the nephew of P.W.3, Nanaji Nathaji. The evidence of P.W.2, Khatuji Motiji Khant, and P.W.3, Nanaji Nathaji Khant, fully establishes that the deceased had gone to the pan-galla at 8.30 p.m. on August 28, 1993. P.W.2, Khatuji Motiji Khant, and P.W.3, Nanaji Nathaji Khant, had asked the deceased where he was going and the deceased had informed them that as he had given loan to the appellant and, as the appellant had received bonus from the Milk Federation, he was going to collect the amount of his loan. Saying so, the deceased had gone towards the direction of Chamar Vas where the house of the appellant was situated. After a few minutes, P.W.2, Khatuji Motiji Khant, and P.W.3, Nanaji Nathaji Khant, heard shouts of the deceased and, therefore, they ran in the direction from where the shouts were coming. When P.W.2, Khatuji Motiji Khant, and P.W.3, Nanaji Nathaji Khant, reached near a neem tree situated near Chamar Vas, they saw that the deceased was lying in a seriously injured condition and was tossing in pain. When P.W.2, Khatuji Motiji Khant, and P.W.3, Nanaji Nathaji Khant, had enquired from the deceased what had happened, he made declaration before them that the appellant had inflicted a knife blow on his stomach. P.W.2, Khatuji Motiji Khant, and P.W.3, Nanaji Nathaji Khant, saw that the appellant was standing with one Babu Ranchhod, Vinu Lemba and Mohan near the place where the deceased was lying. The appellant was having a knife in his hands. When P.W.2 asked the appellant why he had inflicted knife blow on his brother, Amraji Motiji, the appellant threatened that they should go away from that place otherwise they would meet with the same fate as that of the deceased. On the threat being administered by the appellant, P.W.2, Khatuji Motiji Khant, and P.W.3, Nanaji Nathaji Khant, raised shouts and, on hearing the shouts, Abhesing Lalsing Zala, Rameshbhai Bhathibhai Thakore and Bhudar Jivabhai had come at the place of the incident. On seeing other persons coming to the rescue of P.W.2, Khatuji Motiji Khant, and P.W.3, Nanaji Nathaji Khant, the appellant and his associates ran away with the knife. The oral testimony of P.W.2, Khatuji Motiji Khant, fully corroborates the allegations made in the First Information Report Exh.12. P.W.2, Khatuji Motiji Khant, and P.W.3, Nanaji Nathaji Khant, were sitting at the pan-galla which was situated at a distance of 80 feet from the place of the incident. The map of place of incident Exh.19 shows that the house of the appellant was

situated at the distance of 53 feet from the place of incident, which was situated near neem tree. The declaration made before P.W.2, Khatuji Motiji Khant, and P.W.3, Nanaji Nathaji Khant, by the deceased which had become dying declaration as per Section 32 of the Evidence Act, corroborates the case of the prosecution that the appellant had inflicted knife blow on the stomach of the deceased. There is no manner of doubt that the deceased was lying near pan-galla and P.W.2, Khatuji Motiji Khant, and P.W.3, Nanaji Nathaji Khant, could reach the place where the deceased was lying after infliction of knife blow within few minutes and at that time the deceased was alive and was able to make statement or declaration that the appellant had inflicted knife blow. The evidence of P.W.2, Khatuji Motiji Khant, and P.W.3, Nanaji Nathaji Khant, also establishes that the appellant was standing there having knife in his hands. The presence of the appellant is, thus, established beyond doubt by the evidence of P.W.2, Khatuji Motiji Khant, and P.W.3, Nanaji Nathaji Khant, post-mortem notes, and the oral testimony of P.W.1, Dr. I.R. Patel also supports the case of the prosecution that the deceased was inflicted severe blow on the stomach which had resulted into his death. The fact that the deceased had died homicidal death has not been challenged by the learned advocate for the appellant in this appeal. The totality of the evidence, as discussed earlier, proves beyond doubt that, when the deceased approached the appellant to collect his dues, the appellant must have got excited and in that excitement, the appellant must have inflicted knife blow on the stomach of the deceased which has resulted into serious external as well as internal injuries which resulted into the death of the deceased. The corroboratory evidence in the nature of discovery of knife from the house of the appellant substantiates the case of the prosecution that the appellant had inflicted knife injury on the stomach of the deceased with muddamal knife. The evidence of P.W.1, Dr. Ishwarbhai Patel, also corroborates the case of the prosecution that the injury found on the dead body of the deceased is possible if a blow was inflicted by muddamal knife. The totality of the evidence discussed above, in our opinion, establishes beyond doubt that the appellant and the appellant alone had inflicted the knife blow on the stomach of the deceased, which, unfortunately, resulted into his death. Therefore, we confirm the finding of the learned Additional Sessions Judge that the prosecution had proved beyond reasonable doubt that the appellant had inflicted knife injury on the stomach of the deceased, which, unfortunately, resulted into his death.

10. The next point that falls for our consideration is what is the nature of the offences that the appellant has committed on the evidence led before the Sessions Court. To begin with, as pointed out above, only one injury was received by the deceased which was caused by the muddamal knife. Though the injury was on the vital part of the body, but there is nothing to show that the appellant intended to cause deliberate murder of the deceased. It is an established fact that the deceased had gone to the appellant to collect his dues and a heated exchange of words might have taken place, as a result of which, the appellant got excited and had inflicted one knife blow on the stomach of the deceased. In our view, there is no legal evidence in this case that the appellant intended to cause the murder of the deceased. The evidence with regard to threat given by the appellant to P.W.2, Khatuji Motiji Khant, and P.W.3, Nanaji Nathaji Khant, is also of very weak type of evidence. Normally, a person inflicting knife blow would not stay at the place of incident, but he would run away. Therefore, we are not inclined to believe the story of prosecution that the appellant had given threats to P.W.2, Khatuji Motiji Khant, and P.W.3, Nanaji Nathaji Khant, that they would also be finished off, if they would not leave the place of the incident. If the appellant had intention to cause murder of the deceased, he would have inflicted several blows on the deceased as the deceased was alone and nobody was there to rescue him. This circumstance also strengthens our view that the appellant had not acted cruelly. In our view, taking into consideration the totality of the circumstances and the manner in which the incident had taken place, the offence would not fall under Section 302 of the Indian Penal Code, but it would fall under Section 304 Part II of the Indian Penal Code. We, therefore, quash and set aside the conviction of the appellant under Section 302 of the Indian Penal Code, and instead convict him under Section 304 Part II of the Indian Penal Code. The sentence imposed on the appellant to undergo R.I. for life and fine of Rs.300 in default R.I.for one month, also deserves to be reduced, and, instead, the appellant is sentenced to undergo R.I. for ten years and fine of Rs.300 in default R.I. for one month.

11. As a result of foregoing reasons, the appeal is partly allowed. The order of conviction under Section 302 of the Indian Penal Code recorded by the learned Additional Sessions Judge, Sabarkantha, at Himatnagar, by the judgment and order dated May 4, 1995, rendered in Sessions Case No.145 of 1993, and the sentence to undergo

R.I. for life and fine of Rs.300 in default R.I. for one month, is quashed and set aside, and is converted into conviction under Section 304, Part II, of the Indian Penal Code. The appellant is sentenced to undergo R.I. for ten years and fine of Rs.300 in default R.I. for one month. The muddamal be disposed of in terms of the direction given by the learned Judge of the trial court in the impugned judgment.

August 6, 2002 (M.H. Kadri, J.)

(Sharad D. Dave, J.)
(swamy)